



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 29, 1999

Philip A. Feiner, Treasurer
Citizens for Paul Feiner
15 Parkfield Road
Scarsdale, NY 10583

RE: MUR 4838

Dear Mr. Feiner:

On October 30, 1998, the Federal Election Commission notified Citizens for Paul Feiner (f/k/a Paul Feiner for Congress) and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on April 16, 1999, found that there is reason to believe that Citizens for Paul Feiner and you, as treasurer, violated 2 U.S.C. § 441d(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

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If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of thirty days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have questions, please contact Donald E. Campbell, the staff member assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures:

Factual and Legal Analysis
Designation of Counsel Form
Conciliation Agreement

cc: Paul J. Feiner

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Citizens for Paul Feiner
 and Philip A. Feiner, treasurer

MUR 4838

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Bernard Gomberg on October 26, 1998. The complaint alleges that Paul J. Feiner and his principal campaign committee, Citizens for Paul Feiner and Philip A. Feiner, as treasurer ("Committee"), failed to include disclaimer notices on public political advertising during the 1998 election for U.S. Representative in New York's 20th Congressional District.¹

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

Pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"), all expenditures for communications which expressly advocate the election or defeat of a clearly identified candidate, or expenditures to solicit any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, must include a disclaimer. 2 U.S.C. § 441d(a). The Commission's regulations further specify that disclaimers are required on "posters" and "yard signs." 11 C.F.R. § 110.11(a)(1). In Advisory Opinion 1995-9, the Commission stated that the use of a web site by a political committee "should be viewed as a form of general public political

¹ Mr. Feiner lost the election to incumbent Benjamin A. Gilman, 58% to 39%.

advertising under 11 C.F.R. § 110.11.”

If the communication was paid for and authorized by a candidate, an authorized committee of a candidate or an agent thereof, the disclaimer shall clearly state that the communication was paid for by the authorized political committee. 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(a)(1)(i). According to 11 C.F.R. § 110.11(a)(1), the disclaimer shall be presented in a clear and conspicuous manner. The Act and regulations do not provide for “disclaimers by inference.” *See, e.g., FEC v. National Conservative Political Action Committee*, No. 85-2898 (D.D.C. April 29, 1987) (unpublished opinion).

B. Complaint and Response

The complaint alleges that “[Paul] Feiner (or his agents) has violated federal law by failing to include disclaimer notices on public political advertising.” The complaint first identifies an advertisement appearing in the October 1998 edition of the *Nyack (N.Y.) Villager*. The advertisement contains such statements as “Paul Feiner for Congress” and “Elect Paul Feiner For Congress, 20th CD,” along with the campaign’s web site address, <www.feiner.org>. The advertisement does not state who paid for it. Second, the complaint alleges that numerous yard signs advocating the election of Paul Feiner were posted in the district, and includes a photograph of one of the signs. The sign says “Paul Feiner – Congress – Time for a Change” without stating who paid for it. Finally, the complaint alleges that a web site expressly advocating the election of Paul Feiner and soliciting funds for his committee fails to include a disclaimer. Attached to the complaint are two web pages dated October 17, 1998, containing the phrase “Paul Feiner for Congress” in large type and suggesting to readers that if they “want to make a contribution, send a check to ‘Paul Feiner for Congress’” at a given address. The pages do not state who paid for the web site.

In a response to the complaint, the candidate acknowledges that the disclaimer omissions alleged in the complaint occurred, describing them as "an unintentional oversight." The candidate states that the failure to include disclaimers was "due to the fact that I have never run for Congress before and due to the fact that the ads and signs were ordered by campaign volunteers -- rather than professionals." The candidate adds that he has "already remedied [his] internet site to include any disclosure." The candidate has attached to the response copies of his campaign literature: "As you will note . . . I included the disclaimer in all my campaign literature, stationary [sic] and fundraisers, as required by law." All of the items attached to the response state that they were paid for by the Committee.

C. Analysis

The three campaign items referred to in the complaint all appear to constitute public communications containing express advocacy or solicitations for contributions, and also appear to have been paid for and authorized by the Committee. Accordingly, pursuant to 2 U.S.C. § 441d(a)(1), the items required a disclaimer stating that they had been paid for by the Committee. The response acknowledges that the Committee failed to include disclaimers on these items. Therefore, there is reason to believe that Citizens for Paul Feiner and Philip A. Feiner, as treasurer, violated 2 U.S.C. § 441d(a).